

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matters of

Connect America Fund

Rural Broadband Experiments

WC Docket No. 10-90

WC Docket No. 14-259

**STATEMENT IN SUPPORT OF THE APPLICATION FOR REVIEW OF
ORDER AND ORDER ON RECONSIDERATION OF
LAKE REGION ELECTRIC COOPERATIVE, INC.**

The National Rural Utilities Cooperative Finance Corporation (“CFC”) submits this statement in support of Lake Region Electric Cooperative, Inc.’s (“Lake Region”) application for review¹ of the Wireline Competition Bureau’s (“Bureau”) August 15, 2016 Order and Order on Reconsideration denying Lake Region’s request that CFC be eligible to issue a letter of credit (“LOC”) in support of its provisionally accepted rural broadband experiments (“RBE”) bid.² As explained in Lake Region’s application for review, the *Waiver Order* fails to apply existing law and frustrates the Commission’s mission of expanding access to broadband in underserved areas, including Tribal lands.

CFC is the largest non-governmental lender to rural utilities in the United States. CFC’s primary mission is to provide cost-based credit and other financial products to its members, who supply essential services to communities in underserved and hardest-to-reach areas of the

¹ Application for Review of Order and Order on Reconsideration of Lake Region, WC Docket Nos. 10-90, 14-259 (filed Sept. 13, 2016) (“Application for Review”).

² *Connect America Fund; Rural Broadband Experiments*, Order and Order on Reconsideration, DA 16-926, WC Docket Nos. 10-90, 14-259 (Wireline Comp. Bur., rel. Aug 15, 2016) (“*Waiver Order*”).

country. CFC manages and funds the Rural Telephone Finance Corporation (“RTFC”), which makes loans primarily to its telecommunications provider members and affiliates.

CFC and RTFC members who were provisionally selected bidders for the RBE approached CFC and RTFC about the possibility of CFC providing LOCs to those members in order to assist them in satisfying the Commission’s financial qualification requirements for provisionally selected bidders.³ The *RBE Order*, however, required that LOC issuers meet three requirements—be among the 100 largest U.S. banks, have an issuer credit rating of at least BBB-, and be insured by the Federal Deposit Insurance Corporation (“FDIC”) or the Farm Credit System Insurance Corporation (“FCSIC”).⁴ CFC easily meets the first two requirements, but, because CFC is not a depository institution, it is not eligible for FDIC insurance, nor is it part of the Farm Credit System. Therefore, CFC was unable to issue LOCs for these members.

On January 21, 2015, CFC petitioned the FCC to waive the requirement that issuers of LOCs be insured by the FDIC and permit CFC to issue LOCs in support of applications submitted by provisionally-selected bidders for the RBE.⁵ CFC members, including Lake Region, a provisionally-selected bidder, also submitted waiver petitions, requesting the FCC allow CFC to issue a LOC in support of its application.⁶

Lake Region subsequently submitted its RBE application, in which it included a LOC commitment letter from CFC. CFC noted in that letter that it would “arrange for an irrevocable

³ *Connect America Fund; ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98, 29 FCC Rcd. 8769, 8790 ¶¶ 59-60 (2014) (“*RBE Order*”).

⁴ *Id.*

⁵ Petition for Waiver of CFC, WC Docket Nos. 10-90, 14-58 (filed Jan. 21, 2015) (“CFC Waiver Petition”).

⁶ *See, e.g.*, Petition for Waiver of Lake Region, WC Docket Nos. 10-90, 14-58 (filed Mar. 24, 2015).

Stand-by Letter of Credit” which “is expected to be issued by US Bank or another financial institution (‘Issuing Bank’) deemed acceptable to the FCC on CFC’s behalf.”⁷

In May 2016, the FCC concluded that it was in the public interest that CFC be eligible to issue LOCs for the Connect America Fund Phase II (“CAF II”) auction. The Commission acknowledged the unique and critical role CFC plays for rural electric utilities and telecommunications companies, as well as recognized that, although CFC is not a traditional bank eligible for FDIC insurance, it possesses ample qualifications to issue LOCs for applications under competitive bidding programs.⁸ It expressly noted that “CFC has specialized institutional knowledge regarding the types of entities that we expect will participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks.”⁹ The Commission recognized that “[a] number of entities that participated in the rural broadband experiments and entities that have expressed interest in participating [in] future competitive bidding have indicated that they have an established relationship with CFC”¹⁰—acknowledging that, without the ability to obtain LOCs from CFC, many of its members would be shut out of these programs altogether.

Critically, in footnote 262 of the *CAF II Order*, the Commission also stated that its decision to allow CFC to issue LOCs for the CAF II auction would also apply to the RBE

⁷ Application for Review at 3-4.

⁸ See *Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, 31 FCC Rcd. 5949, 5994-96 ¶¶ 128, 130 (2016) (“*CAF II Order*”).

⁹ *Id.* ¶ 130.

¹⁰ *Id.*

program, and thus that the CAF II rules mooted CFC's petition.¹¹ Nevertheless, in August 2016, the Bureau denied Lake Region's petition asking that CFC be permitted to issue a LOC in support of its RBE bid.

Not only was the Bureau's decision in the *Waiver Order* contrary to the FCC's rules—and should therefore be reversed as contrary to the law in effect at the time the *Waiver Order* was issued¹²—but it also stands in stark contrast to the Commission's strongly articulated policy rationales in the *CAF II Order*.

First, the Bureau has interpreted footnote 262 to apply only to CFC's future eligibility to issue LOCs for RBE participants.¹³ Because the deadline for submission of RBE applications was over a year ago, however, this interpretation would do nothing more than allow CFC to issue LOCs *in place of the applicant's original LOC issuer*. If that interpretation is correct, however, CFC's petition cannot be moot. CFC, both in its petition and in its subsequent advocacy before the Commission, repeatedly confirmed that its members were largely *unable* to obtain LOCs from a qualifying bank.¹⁴ Restricting the application of footnote 262 to do nothing more than

¹¹ *Id.* ¶ 128 n.262.

¹² *See* Application for Review at 6-7.

¹³ *See Waiver Order* ¶ 2 n.10

¹⁴ *See* CFC Waiver Petition at 10 (“CFC is the primary credit resource for close to 200 of its members. As a result, some of CFC's borrowers located in rural areas may not be able to bid for grants from the FCC Programs since they do not have a banking relationship with an FCC-approved bank.”); Letter from Kristine Laudadio Devine, Counsel to CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 14-58, 14-259, at 1 (filed Nov. 13, 2015) (“CFC would expect most, if not all, of its borrower companies to turn to CFC to issue LOCs on their behalf in the CAF II auction, or under the RBE program. Indeed, CFC believes that almost all, if not all, rural telecommunications and electric cooperatives interested in or selected under either program will struggle to find LOC support from an eligible commercial bank if CFC is ineligible to issue those LOCs. And even if these entities were able to obtain a LOC through an eligible commercial bank, it would cost substantially more over the life of the support distribution than a CFC-issued LOC, as CFC has already demonstrated.”).

allow CFC to replace an original LOC issuer deprives CFC of the full relief it—and its members, including Lake Region—requested. The only position consistent with mootness is therefore one in which the Bureau grants Lake Region’s petition.

Second, the Bureau’s rationale for denying Lake Region’s petition conflicts with the Commission’s finding that allowing CFC to issue LOCs is in the public interest. The Bureau reasoned that granting Lake Region’s waiver would undermine the purpose of establishing financial eligibility criteria for the RBE by increasing the risk of disparate treatment.¹⁵ The Commission, in contrast, found that, in fact, CFC’s “uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with a class of potential auction bidders” render it *equally able* to secure funding provided under these programs as any other banks meeting the general criteria.¹⁶ That is, allowing CFC to issue LOCs to its members would *not* open the floodgates to “an independent, case-by-case comparative analysis of the ‘stability and soundness’ of a potentially vast number of institutions guaranteeing a wide range of funding”¹⁷ because CFC is able to provide “assurances that are *equivalent* to those provided by banks meeting our general criteria.”¹⁸

¹⁵ See *Waiver Order* ¶ 10 (“We are not persuaded that grant of these waiver requests would serve the public interest. The Commission chose to adopt specific eligibility criteria for the rural broadband experiments to avoid the need for an independent, case-by-case comparative analysis of the ‘stability and soundness’ of a potentially vast number of institutions guaranteeing a wide range of funding. Such an analysis would have increased the risk of disparate treatment, and diverted limited Bureau resources away from Phase II implementation.”(internal citations omitted)).

¹⁶ *CAF II Order* ¶ 130.

¹⁷ *Waiver Order* ¶ 10.

¹⁸ *CAF II Order* ¶ 130 (emphasis added).

Moreover, as noted by Lake Region, the denial of Lake Region’s petition frustrates the goals of the RBE on the whole by creating barriers to broadband deployment in areas where no more than 32 percent of residents have access even to advanced telecommunications capability, much less to broadband.¹⁹ Yet the Bureau concluded that granting Lake Region’s waiver would not serve the public interest.²⁰ As Lake Region notes, “[t]he only reason Lake Region has not been issued funding to deploy robust broadband to these areas is because it obtained a LOC commitment letter from the CFC—a bank the FCC has deemed eligible to do so. Rather than promoting a public policy goal, the *Waiver Order* serves to continue to deny Tribal lands access to broadband.”²¹

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¹⁹ See Application for Review at 8-9.

²⁰ See *Waiver Order* ¶ 10.

²¹ Application for Review at 9.

CFC urges the Commission to reverse the *Waiver Order* as contrary to both the law in effect at the time it was issued and the strong public interest recognized by the Commission when it adopted rules allowing CFC to issue LOCs to its members in competitive bidding programs.

Respectfully submitted,



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September 28, 2016